

82-5688

IN THE SUPREME COURT

OF THE

UNITED STATES OF AMERICA

RECEIVED

NOV 8 1982

OFFICE OF THE CLERK
SUPREME COURT, U.S.

CASE NO. _____

CHARLES D. SCOTT AND POLLY SCOTT

VS.

BENJAMIN L. KIMERLING

STATEMENT OF JURISDICTION
Filed pursuant to Rule 15 U.S. S. Ct.

Charles D. Scott
Attorney for himself and

Polly C. Scott
His Christian wife

3132 Valley Park Drive
Birmingham, Alabama 35243
Telephone 205/967-5493

IN THE SUPREME COURT OF THE
UNITED STATES OF AMERICA

CHARLES D. SCOTT AND POLLY SCOTT,)	
Appellants)	JURISDICTIONAL STATEMENT
vs.)	Per S. Ct. Rules 13 & 15
)	
BENJAMIN L. KIMERLING,)	On Appeal from the
Appellee)	Alabama Supreme Court

(a)

THE QUESTIONS PRESENTED BY THE APPEAL

1. Can the Defendant's right to jury trial without sale or delay as guaranteed by the Alabama Constitution, Article I, Sections 10,11 and 13, as well as the United States Constitution, Amendments 7,9 and 14, be subjugated to a statutory requirement demanding cash and security as a prior condition to its enjoyment?
2. Can a Defendant be obligated to bemean himself as a pauper, honestly or dishonestly in order to enjoy free access to a jury trial in a civil cause without purchase or sale, without the mandatory payment of docket fees, jury demand fees, or public law library taxes?
3. Can Alabama Civil Rule 62(dc) be constitutional, when it makes payment of fees, taxes and bonds for costs a mandatory prerequisite to the enjoyment of a trial by jury?
4. Does the deprivation of free access to civil jury trial in this case in the same Circuit Court which allows free access to civil jury trial in other similar cases constitute a violation of the "equal protection of the laws", guaranteed by the Fourteenth Amendment to the United States Constitution?

(b)

LIST OF PARTIES TO THE PROCEEDING

5. The caption of this case contains the names of all the parties to the original proceeding, but it does not reveal that the State of Alabama is actually a real party in interest in the conduct of the instant appeal, in that it is the State of Alabama, which has deprived the Appellant of his right to jury trial. Hence the State of Alabama will be served a copy of this pleading through the Office of the State Attorney General, in accordance with Rule 20.4(c) of the U.S. Supreme Court.

CHARLES D. SCOTT Original Defendant

FOLLY C. SCOTT Original Defendant

BENJAMIN L. KIMERLING Original Plaintiff

Were actual parties to the litigation.

DONALD CRUSE District Court Judge

THOMAS E. HUEY, Jr. Circuit Court Judge

The JUDGES of the Alabama Civil Appeals Court

The JUSTICES of the Alabama Supreme Court

Deprived the Original Defendants, the Appellants herein, of their unalienable right to trial by jury, without payment of any fee or cost, whatever.

(c)
TABLE OF CONTENTS

CONTENT	PAGE
(a) Questions presented by the Appeal	1
(b) List of Parties to the proceeding	2
(c) 1. Table of Contents	3
2. Table of Authorities	4
(d) Reports of Orders and Opinions below	5
(e) Grounds for invocation of Jurisdiction	6
i. Nature of the proceeding	6
ii. Judgment-Order-Notice of Appeal	6
iii. Statutory Jurisdiction	7
(f) Constitutional Provisions, Statutes and Rules	8
(g) Statement of the Case	9
(h) Reasons why the Questions are substantial	11
(i) Affidavit of Service	13
(j) Appendix	12

TABLE OF AUTHORITIES

UNITED STATES CONSTITUTION

Amendment Seven

Amendment Nine

Amendment Fourteen

ALABAMA CONSTITUTION OF 1901

Section 10

Section 11

Section 13

1975 CODE OF ALABAMA

12-12-3

12-12-30

12-12-70

OPINION OF THE ALABAMA SUPREME COURT CLERK

Opinion Number 16

ALABAMA RULES OF COURT

Rule 62

ALABAMA RULES OF JUDICIAL ADMINISTRATION

Rule 7

(d)

REPORTS OF ORDERS AND OPINIONS BELOW

6. The original Order denying the Defendants Scott a jury trial came out of the "District" Court for Jefferson County, Alabama, dated June 26, 1981, and is bound herein as APPENDIX "A".
7. The next Order involved in this case came out of the Circuit Court for Jefferson County, Alabama, wherein the Court granted Plaintiff in a civil action, Benjamin L. Kimerling, moved the Court to dismiss the jury trial "appeal" of Charles D. and Polly Scott, Defendants, because the Scotts had refused to pay for access to jury trial in the Circuit Court. That Opinion of the Circuit Court was dated September 1, 1981, and is designated herein as APPENDIX "B".
8. The next Order and Opinion issued per curiam from the Alabama Court of Civil Appeals, wherein the Court denied the Scotts relief, and upheld the compulsory payment of fees, bonds and costs in order to enjoy access to jury trial. That Opinion of the Court of Civil Appeals is dated January 13, 1982, and is bound herein as APPENDIX "C".
9. On rehearing, the Alabama Court of Civil Appeals again denied relief. That Order is dated February 10, 1982. A copy of the notice is bound as APPENDIX "D".
10. The Alabama Supreme Court granted certiorari, heard the case, and then denied certiorari without opinion on August 6, 1982. The Order of the Court is set out herein as APPENDIX "E".
11. The Notice of Appeal was filed by the Scotts with the Alabama Supreme Court on September 7, 1982. A copy of that Notice is attached herein as APPENDIX "F".

(e)

GROUND'S FOR INVOCATION OF THE COURT'S JURISDICTION

(i) THE NATURE OF THE PROCEEDING

12. This proceeding grows out of the unconstitutional actions of members of the Alabama Judiciary, who deprived the appellants of the right to jury trial. The Appellants are attacking the statutes employed by the Alabama Judiciary to deprive them of their rights as repugnant to the Alabama Constitution and the United States Constitution.

13. The proceeding originated in an Alabama "District Court", wherein the Defendants Scott demanded a jury trial. The Court contended that provisions of law not allow any jury trial there, so the Scotts were forced to suffer a default judgment in order to supposedly gain access to a jury trial in the "Circuit Court".

14. The Circuit Court Clerk docketed the Scott's case ("appeal"), without the payment of any fees, based on Scott's assertion of his rights to proceed to jury trial free from costs, fees or payments of any kind. During the pendency of the Circuit Court action, the Plaintiff Kimerling moved for dismissal of the Case, for non-payment of fees, costs, etc. and the Motion to Dismiss was granted.

15. The Appeal was carried to the Alabama Court of Civil Appeals, which failed to meet the jury trial issue at all, pretending to resolve the case on failure to meet legislative requirements for "appeals" to the Circuit Court.

16. After the Appeals Court ruled twice against Scott, he petitioned the Alabama Supreme Court for certiorari. The writ was granted, briefs filed and oral hearing was had - THEN THE WRIT OF CERTIORARI WAS DENIED as having been improvidentially granted. Scott is appealing from the Supreme Court Order as erroneous.

(ii) JUDGMENT-ORDER-NOTICE OF APPEAL

17. THE JUDGMENT of the Alabama Supreme Court appealed from was dated August 6, 1982, and is attached as APPENDIX "E".

18. THE DATE OF THE NOTICE OF APPEAL was September 7, 1962.

19. THE NOTICE OF APPEAL was filed in the Alabama Supreme Court. It is designated as APPENDIX "F".

(iii) STATUTORY JURISDICTION

20. Appellant's jurisdictional claim is based on the fact that the Alabama Courts deprived Appellants of a constitutionally guaranteed right.

21. According to the provisions of 28 USC 2403(b), the State of Alabama should be certified as a party intervenor, inasmuch as the State of Alabama is the root cause of the problem on appeal, and the one who must be enjoined from execution, application and enforcement of the statutes which have deprived the Appellants of a jury trial without sale or delay.

(f)

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

UNITED STATES CONSTITUTION

AMENDMENT VII

"In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any court of the United States, than according to the rules of the common law."

AMENDMENT IX

"The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people."

AMENDMENT XIV

"Section 1: All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

ALABAMA CONSTITUTION OF 1901

"Section 10. That no person shall be barred from prosecuting or defending before any tribunal in this state, by himself or by counsel, any civil cause to which he is a party."

"Section 11. That the right of trial by jury shall remain inviolate."

"Section 13. That all courts shall be open; and that every person, for any injury done him, in his lands, goods, person, or reputation, shall have a remedy by due process of law; and right and justice shall be administered without sale, denial, or delay."

1975 CODE OF ALABAMA

"12-12-3. Trial of Cases. All cases in the district court shall be tried by the judge, who shall determine all issues of fact and law without a jury."

"12-12-30. Civil Jurisdiction generally. The original civil jurisdiction of the district court of Alabama shall be uniform throughout the state, concurrent with the circuit court, except as otherwise herein provided, and shall include all civil actions in which the matter in controversy does not exceed \$5000.00...."

12-12-70. Civil cases. Any party may appeal from a final judgment of the district court in a civil case by filing notice of appeal in the district court, within 14 days of the date of judgment...together with security for costs as required by rule or law."

OPINION OF THE CLERK NO. 16, ALABAMA SUPREME COURT

"It is my opinion that an appeal from a district court to a circuit court is a case within the meaning of the words "cases filed", in 12-19-71; that a filing of an appeal is a filing under Rule 7, Rules of Judicial Administration; and that the fee for docketing an appeal from the district court to the circuit court is \$35.00."

ALABAMA RULES OF COURT

"Rule 62(a) Automatic Stay; Exceptions. Except as stated herein or as otherwise provided by statute or by order of the court for good cause shown, no execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until expiration of thirty days after its entry. ..."

"Rule 62(d) Stay upon appeal. When an appeal is taken the appellant by giving a supersedeas bond may obtain a stay subject to the exceptions contained in subdivision (a) of this rule. The bond may be given at or after the time of filing the notice of appeal... The stay is effective when the supersedeas bond is approved by the court." (Emphasis added).

"Rule 62(dc) District Court Rule. Rule 62 applies in the district courts except...the provision for a supersedeas bond in Rule 62(d) is deleted and Rule 62(d) is modified so as to require only a bond for costs or affidavit of substantial hardship, approved by the court in lieu of said bond." (emphasis added).

ALABAMA RULES OF JUDICIAL ADMINISTRATION

"Rule 7 Fees for miscellaneous filings. Any filing for which there is no express cost under the consolidated fee structure shall be treated as an original filing for cost purposes."

(g)

STATEMENT OF THE CASE

22. The Scotts made known their demand for a jury trial from the outset in the District Court as is established in page (R-3) of the Record on Appeal lodged with the Alabama Court of Civil Appeals.

23. Upon the occasion of the Scotts filing of their Notice of Appeal from the District Court to the Circuit Court as provided by statute, in order to enjoy a jury trial, they officially made known their position that they were demanding access to the jury without payment of any kind. The Record (R-9) shows "I refuse to pay any money or post any bond to enjoy my right to a jury trial.", and this statement was laid before the Circuit Court originally, and before the higher courts in Alabama on appeal.

24. The Clerk of the Circuit Court duly lodged the Scott's appeal in Circuit Court for jury trial.

25. The original Plaintiff Kimerling moved the Circuit Court to dismiss the "appeal" for failure to post bond for costs, as is reflected in the Record (R-11).

26. The Circuit Judge, Huey, was duly advised of the Scott's objection to payment for access to the jury by their Motion attacking Rule 62(dc) as

unconstitutional insofar as it demanded posting of any money or bond for "costs", and they advanced their position as follows:

"Appellant Charles D. Scott moves the Court to strike Appellee's Motion to Dismiss, and further moves the Court to declare Alabama Civil Rule 62(dc) unconstitutional and void.

For cause, Appellant shows this Court:

That the bonding requirement amounts to the purchase or sale of justice and the right to jury trial. The bond requirement forces the Appellant to pay out money as a prior condition to the enjoyment of rights which are expressly guaranteed to him by the Alabama Constitution, Article 1, Sections 10, 11, and 13, as well as the United States Constitution, Amendments 7, 9, and Amendment 14, Section 1.

Appellant shows the Court that he is not obligated to demean himself to be a pauper in order to enjoy the right to justice and a jury trial without purchase or delay. The Court may take judicial notice that the docket fee, the jury demand fee and the public library tax demanded from the appellant by Clerk Polly Conradi likewise constitutes a violation of Appellant's right as originally set out in the Magna Charta and recognized by authorities cited above.

Wherefore Appellant prays this Court for the relief set out above and its order declaring that the Appellant is entitled to access to the jury trial of his cause without the payment of any fee or bond."

27. The Circuit Judge, Huey, granted the Plaintiff's Motion to Dismiss for failure to post bond.
28. The Alabama Court of Civil Appeals received briefs and oral argument setting out the premise that the Alabama Legislature can establish Courts to try cases without juries if they wish, but they cannot make the civil Defendants access to a jury dependant on the payment of any fee, whatever. The issue was clearly drawn as the right to jury trial, and not any "right of appeal". The Court of Civil Appeals finessed the issue in its per curiam Opinion APPENDIX "C".
29. The Alabama Supreme Court accepted certiorari, heard oral argument in due course, and then came out with their Order APPENDIX "E" denying certiorari as "having been improvidentially granted". No rehearing was possible, so no petition for rehearing was filed.
30. Notice of Appeal from the Order of the Alabama Supreme Court was filed September 7, 1982 APPENDIX "F".

(h)

WHY THE QUESTIONS ARE SUBSTANTIAL

Inasmuch as the Appellant herein, Charles D. Scott, has proceeded pro se from the outset in the courts, he has suffered severe bias and prejudice to his efforts to bring the issues before the courts in Alabama. They have consistently failed and refused to face the single issue which Scott has argued-that access to a jury cannot have a price put upon it to be paid by the civil defendant at any stage prior to the final judgment of and by the jury.

The officials of the State are so intensely bigoted in favor of the status quo that they refuse to acknowledge that the issue of statutory "right to appeal" as provided by the Legislature cannot be advanced as a "bait and switch" scheme to deprive the defendant of his jury trial right.

If this Court cannot or will not hear this issue fully, the "right to a jury trial" will become nothing but a historical relic - a fossilized idea that once was real, but no longer is.

APPENDIX

Exhibit	Description
"A"	ORDER of the District Court
"B"	ORDER of the Circuit Court dismissing
"C"	ORDER AND OPINION of the Alabama Court of Civil Appeals
"D"	ORDER of the Alabama Court of Civil Appeals denying rehearing
"E"	ORDER of the Alabama Supreme Court denying certiorari
"F"	NOTICE OF APPEAL
"O"	ORDER of Bankruptcy Confirmation

CASE ACTION SUMMARY
- CIVIL -

Case Number

DV 81 5319
ID VN Number

IN THE DISTRICT COURT OF JEFFERSON COUNTY

CASE INFORMATION (Phone Numbers, etc.)

FILED IN OFFICE

JUL 27 1981

POLLY CONTRADI
CLERK OF CIRCUIT COURT
JEFFERSON COUNTY, AL.

PLAINTIFF(S)

Benjamin L. Kimerling
d/b/a The Birmingham News
Br. 923

DEFENDANT(S)

Charles Darrell Scott
(3336 Mountain Side Rd,
B'ham 35243)

SVS DT

CASE NUMBER

☐ Jury
☐ Non-Jury

AMOUNT

\$ 4,080.42

DATE FILED

4-17-81

Count 1: Open Account w/int & etc

ATTORNEY(S) FOR PLAINTIFF(S)

(Paul M. Paffler)

Jim M. Sandefur

ATTORNEY(S) FOR DEFENDANT(S)

Count 2: Goods sold & delivered
w/int & atty

Judge's ID No.

Plaintiff

Yes

Defendant

No

Disposition Type

Date

☐ For Plaintiff☐ For Defendant☐ Settled☐ Dismissed☐ Default☐ Non-Suit☐ Other

THIRD PARTY/GARNISHEE

ATTORNEY

DATE

ACTIONS, JUDGMENTS AND CASE NOTES

6-10-81 Trial notice returned from P.O. "Attempted, Not Known" on attorney for plaintiff

6/11/81 Atty Paul Paffler going with Atty General's office. Case to be handled by Atty Jim Sandefur (copy of trial notice sent & also notified by phone)

Judgment by default-consentual for Plaintiff and against Defendant
for _____ with waiver of exceptions to personal property - 1
with costs of Court

7-10-81 Notice of appeal to Circuit Court filed by Defendant. Defendant refuses to post bond or pay any money to enjoy right to trial by jury.

7-10-81 Notice of appeal mailed to Jim M. Sandefur, Atty.

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

BENJAMIN L. KIMERLING,

Plaintiff

vs.

CHARLES DARRELL SCOTT,

Defendant

Civil Action No. CV 81 3224


NOTION TO DISMISS APPEAL

Comes now the Plaintiff in the above-styled action and as grounds for said motion the Plaintiff shows unto the Court the following:

1. On or about the 10th day of July, 1981, the Defendant filed a notice of appeal from the District Court of Jefferson County to the Circuit Court of Alabama.

2. In said notice of appeal, it appears that no bond was posted for costs and no affidavit of substantial hardship was filed and approved by the Court.

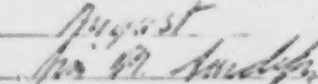
WHEREFORE, Premises considered, it is requested that said notice of appeal be set aside.


J. M. SANDEFUR
Attorney for Plaintiff
4 Office Park Circle, Room 120
Birmingham, Alabama 35223

TAKE NOTICE: The foregoing Motion
will be heard on the ____ day of
____, 1981, at ____ M.

CERTIFICATE OF SERVICE

I certify that I have served a copy of the foregoing pleading upon attorneys of record for all other parties in this action by placing same, properly addressed, in the mail with sufficient postage to insure delivery on ____ day of

____, 1981
By 

J. M. SANDEFUR, Attorney at Law
4 Office Park Circle, Suite 120 Mountain Brock, AL 35223

September 1, 1981. The foregoing motion is granted. The appeal from the District Court of Jefferson County to the Circuit Court is dismissed. Costs taxed against defendant.

Thomas E. Huey, Jr.
Presiding Judge

STATE OF ALABAMA --- JUDICIAL DEPARTMENT

THE COURT OF CIVIL APPEALS

OCTOBER TERM 1981-82

Civ. 3009 and
Civ. 3010

Charles D. Scott and Polly Scott

v.

Benjamin L. Kimerling

Appeal from Jefferson Circuit Court

PER CURIAM

The plaintiff sued the defendants on open account in the District Court of Jefferson County. A default judgment was taken by plaintiff against defendants.

Thereafter, the defendants sought to appeal to the Circuit Court of Jefferson County. In its "Notice of Appeal" from the district court to the circuit court the defendants demanded a trial by jury

and also stated the following: "I refuse to post any bond or pay any money to enjoy my right to trial by jury."

The plaintiff filed in the circuit court a motion to dismiss defendants' appeal for failure of defendants to "post" bond for costs or give affidavit of substantial hardship. The trial court granted plaintiff's motion and defendants appeal to this court.

The defendants, pro se, acknowledge that they refused to pay "costs." They contend that to pay such cost would violate certain of their constitutional rights, both state and federal. Suffice it to say, we find no merit in their contention.

The Code of Alabama 1975, section 12-12-70, states as follows:

Civil cases. - Any party may appeal from a final judgment of the district court in a civil case by filing notice of appeal in the district court, within 14 days from the date of the judgment or the denial of a posttrial motion, whichever is later, or, if the appeal is to an appellate court, within the time prescribed by the Alabama Rules of Appellate Procedure, together with security for costs as required by law or rule.

There are apparently no express costs for filing in the circuit court an appeal from the district court. However, Rule 7 of the Alabama Rules of Judicial Administration provides as follows:

ER207

Any filing for which there is no express cost under the consolidated fee structure shall be treated as an original filing for cost purposes.

Opinion No. 16, Opinion of the Clerk, Supreme Court of Alabama, 362 So. 2d 1259 (Ala. 1978), stated in part as follows:

SUBSTITUTE
FOR
PROTECTION
OF
LAW.

It is my opinion that an appeal from a district court to a circuit court is a case within the meaning of the words, "cases filed," in § 12-19-71; that a filing of an appeal is a filing under Rule 7, Rules of Judicial Administration; and that the fee for docketing an appeal from the district court to the circuit court is \$35.00.

The distinguished clerk of the supreme court is to this court eminently correct.

We therefore find that there are appropriate costs to be paid upon taking an appeal from the district court to the circuit court. We further find that section 12-12-70 requires the payment of these costs. Furthermore, such requirement does not violate any constitutional "rights" of defendants. "Costs" are a part of the burden of litigation and no litigant is deprived of a constitutional right by a statute which imposes costs on him. See C.J.S. Costs § 3, and cases cited therein.

ONLY TO
THE
PLAINTIFF

Needless to say, the trial court did not err in dismissing defendants' appeal.

The case is due to be affirmed.

AFFIRMED.

All the judges concur.

AUGUST 6, 1982

THE STATE OF ALABAMA - - - - - JUDICIAL DEPARTMENT

IN THE SUPREME COURT OF ALABAMA

SPECIAL TERM 1982

81-438

Ex Parte: Charles D. Scott and Polly Scott
PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS
(Re: Charles D. Scott and Polly Scott vs. Benjamin L. Kimerling)

WHEREAS, on April 27, 1982, a Writ of Certiorari to the Court of Civil Appeals was granted by this Court, and the cause was set down for submission pursuant to Rule 39, Alabama Rules of Appellate Procedure.

WHEREUPON, come the parties and the Petition for Writ of Certiorari to the Court of Civil Appeals being argued and submitted and duly examined and understood by the Court, it is considered by the Court that the writ heretofore issued should be quashed and that the petition should be denied.

IT IS, THEREFORE, CONSIDERED AND ORDERED that the Writ of Certiorari heretofore issued to the Court of Civil Appeals be, and the same is hereby, quashed, and the Petition for Writ of Certiorari be, and the same is hereby, denied, at the costs of the petitioners, for which costs let execution issue.
NO FURTHER COSTS DUE SUPREME COURT.

FAULKNER, J.

TORBERT, C.J., JONES, ALMON, SHORES, EMBRY, BEATTY AND ADAMS, JJ., concur.

I, Dorothy F. Norwood, as Acting Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appears of record in said Court.

Witness my hand this 1st day of ~~March~~ 1982

Dorothy F. Norwood

Acting Clerk, Supreme Court of Alabama

EXHIBIT 'E'

OFFICE OF
CLERK OF THE COURT OF CIVIL APPEALS
STATE OF ALABAMA
MONTGOMERY

Re: CIV. 2009 and 3010

February 10, 1982

Charles D. Scott
Folly C. Scott

Appellant

vs.

Benjamin L. Kimberling

Appellee

You are hereby notified that the following indicated action was taken in the above cause by the Court of Civil Appeals:

- ☐ Court Reporter granted additional time to file reporter's transcript to and including
- ☐ Clerk/Register granted additional time to file clerk's record/record on appeal to and including
- ☐ Appell ☐ granted 7 additional days to file brief(s) to and including
- ☐ Appellant(s) granted 7 additional days to file reply brief(s) to and including
- ☐ Record on Appeal filed on this date.
- ☐ Appendix Filed on this date.
- ☐ Submitted on Briefs
- ☒ Application for rehearing overruled. No opinion written on rehearing.
- ☐ Permission to file amicus curiae briefs granted
- ☐ Rules suspended.

MAILING ADDRESS:
2600 East South Boulevard, Room 250
Montgomery, Alabama 36116

John H. Wilkerson, Jr.
Clerk, Court of Civil Appeals of Alabama

EXHIBIT "D"

CHARLES D. SCOTT and
POLLY SCOTT,

APPELLANT-PETITIONERS,

vs.

CASE NO. 81-438

BEJAMIN L. KIMBERLING,

APPELLEE-RESPONDANT.



NOTICE OF APPEAL TO THE
SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Charles D. Scott and Polly Scott, Appellants in the above styled cause, hereby apply to the Supreme Court of the United States from the decision and final order entered in this action on August 6, 1942, by the Supreme Court of Alabama, quashing the writ of certiorari as improvidently granted - and praying from the Civil Court of Appeals in Montgomery County, Alabama.

This appeal is taken pursuant to U.S.C. 1-17-17.

Charles D. Scott

Charles D. Scott
Attorney at Law
Polly Scott
202 Wall Street
Montgomery, Alabama
Telephone 2-1234

PROOF OF SERVICE

I, Charles D. Scott, attorney, Pro Se, Appellant herein, hereby certify that on the 7th day of September, 1964 I served copies of the foregoing Notice of Appeal to the Supreme Court of the United States on all parties required to be served as follows:

1. On appellee herein Benjamin L. Kinsling, by depositing a copy in the United States post office, with first class postage prepaid, addressed to Jim M. Sanderfer, his counsel of record, at 14 Office Park Circle, Room 120, Mountain Brook, Alabama 35243.

2. On all other parties to the proceeding below by depositing copies in the United States post office, with first class postage prepaid, addressed to their respective offices as follows:

To Mr. John H. Wilkersons Jr., Clerk.
Court of Civil Appeals, State of Alabama.
2600 East South Boulevard, Room 250
Montgomery, Alabama 36106.

To Polly Conradi, Clerk
Circuit Court Jefferson County, Alabama
CV-81-3224, DV-81-3218 & CV-81-3225, DV-81-3219
Room 307 Courthouse
Birmingham, Alabama 35203

To Governor Fob James
Governor of State of Alabama
Capitol Building
Montgomery, Alabama 36130

To Mr. Charles Graddick, Attorney General.
State of Alabama
64 Union Street
Montgomery, Alabama 36130

Charles D. Scott

Charles D. Scott
Attorney for himself and for
Polly Scott his Christian.
3132 Valley Park Drive
Birmingham, Alabama 35243
Telephone 205-967-5493.

UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

IN RE:

Charles Darrell Scott

Debtor.

No. 82-05095

In Proceedings Under
Chapter 13 of the
Bankruptcy ActORDER OF CONFIRMATION
ORDER FOR PAYMENT OF FILING FEES IN INSTALLMENTS
PAYMENT ORDER

Notice of a hearing on confirmation as required by Chapter 13 of the Bankruptcy Act having been given to debtor and to all creditors as listed upon the statement of the debtor; and, at the hearing on confirmation, on October 26, 1982, the debtor having filed a proposed plan; and all requirements for confirmation being met;

IT IS ORDERED THAT:

(1) The debtor's plan is confirmed. Debtor's application to pay filing fees in installments is approved. Debtor is to make no payment to his attorney as compensation for services in this case, said compensation to be paid by the Trustee from proceeds of this case.

(2) Each creditor must file a written proof of claim in the form provided by law in order to participate in disbursements herein. Claims will be paid as duly filed, without hearing, unless the debtor moves to reduce or expunge same, in which case a hearing upon such claims will be held to determine the amount in which they are to be paid. Secured creditors shall retain their liens until such time as the value distributed to such creditors through the plan is equal to the value of their security as of the effective date of the plan. Any secured claim as to which a specific plan of payment is not provided in Paragraph (3) below shall be paid with unsecured claims, but without prejudice to the security of such claim.

(3) The debtor agrees to pay into this court, to the Trustee, the sum of \$315.00 monthly, beginning October 30, 1982, out of which amount the court costs are to be paid, then an attorney fee of \$400.00 to debtor's attorneys, Smith, White & Hynds. When these costs have been satisfied, the following fixed payment is to be made:

Mr. W. A. Scott

\$90.00 per month.

The remaining balance of monies received by the court is to be distributed pro rata among the debtor's other creditors whose proofs of debt have been filed and allowed.

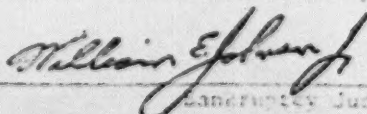
For good cause shown, the plan in this case is confirmed for a period that is longer than 3 years.

If applicable, the debtor shall maintain all current rent payments on any realty occupied by the debtor by payment direct to the landlord or the landlord's Agent during the life of the plan in this case. Should the debtor default on such payments, the landlord may proceed with applicable remedies to secure possession of the leased property.

All stays provided for by the Bankruptcy Act, the Bankruptcy Rules, and the previous orders of this Court are vacated insofar as they pertain to a postpetition indebtedness due a public utility and incurred by the debtor for postpetition services furnished to the debtor by a public utility.

(4) [] Payments are to be made through an order directed to the debtor's employer.
XX Payments are to be made direct to the Standing Trustee by the debtor.

(5) Jurisdiction is retained of the debtor and his property during the period of extension. Debtor may not dispose of nor place any lien upon any property without the consent of the Court. Debtor may not incur any new debts without the consent of the Trustee. All creditors of the debtor, whether included in the plan or excluded from the plan, are enjoined from taking any action of any kind to enforce any lien upon the property of the debtor and are further enjoined from commencing or continuing any proceedings in any court against the debtor. Each creditor whose claim is part of the plan herein is hereby enjoined from demanding, requesting or attempting collection of any part of said claim from debtor, his employer, his joint obligor, or in any manner other than through these proceedings.

Dated: October 26, 1982


Bankruptcy Judge
500 South 22nd Street
Birmingham, Alabama 35233

Copy: To all creditors, Debtor,
and debtor's attorney of record

EXHIBIT "O"

RECEIVED

NOV 8 1982

OFFICE OF THE CLERK
SUPREME COURT, U.S.

82-5688

IN THE SUPREME COURT OF THE
UNITED STATES OF AMERICA

CHARLES D. SCOTT,

Petitioner

vs.

BENJAMIN J. KIMERLING

)
)
)
)
)

PETITION FOR LEAVE
TO PROCEED
IN FORMA PAUPERIS

TO: THE HONORABLE, THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE
SUPREME COURT OF THE UNITED STATES OF AMERICA

Your Appellant Charles D. Scott, respectfully requests that this Court permit him to proceed in forma pauperis in his APPEAL from the decision of the Alabama Supreme Court dated August 6, 1982 Re:81-438, a copy of which is attached herein.

This request is made since your Appellant is a pauper as the attached AFFIDAVIT will show.

Your Appellant understands that by the granting of this Petition, he will not be waiving any of his constitutionally guaranteed rights.

Respectfully submitted,

Charles D. Scott

Charles. D. Scott, Appellant

Attorney for himself

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

AFFIDAVIT IN SUPPORT OF PETITION
TO PROCEED IN FORMA PAUPERIS

I, Charles D. Scott, first being duly sworn, depose and say that I have herewith made application to this Court to come before it on direct Appeal from a decision of the Supreme Court of the State of Alabama. The constitutional questions presented are raised in the JURISDICTIONAL STATEMENT attached, prepared and submitted in accordance with Rule 15 U.S. Supreme Court.

I state that I am a pauper, unable to pay the costs of the suit or action submitted herewith. I am unable to give security for the same, and I am constitutionally entitled to the redress I seek in this action.

I further certify that attached document, bound herein as APPENDIX "O", and entitled "ORDER OF CONFIRMATION", issued out of the UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF ALABAMA, is a true and correct copy of said document, which I received in due course, since I am that party, Charles D. Scott, now before the Bankruptcy Court.

I understand that I make the statements above, under penalty of perjury.

Charles D. Scott

Charles D. Scott, Affiant

Subscribed and sworn before me this 4 day
of November, 1982, at Montgomery, Al.

Grace S. Nargel

Notary Public.

My commission expires Dec. 3, 1983